

ORDINANCE NUMBER O- **21167** (NEW SERIES)

DATE OF FINAL PASSAGE JAN 28 2020

AN ORDINANCE AMENDING CHAPTER 9, ARTICLE 8, DIVISION 5 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 98.0502; AMENDING CHAPTER 11, ARTICLE 3, DIVISION 1 BY AMENDING SECTION 113.0103; AMENDING CHAPTER 14, ARTICLE 2, DIVISION 6 BY AMENDING SECTION 142.0640; AMENDING CHAPTER 14, ARTICLE 2, DIVISION 13 BY AMENDING SECTIONS 142.1302 AND 142.1303, BY ADDING NEW SECTIONS 142.1304 AND 142.1305, BY AMENDING, RENUMBERING, AND RETITLING SECTION 142.1304 TO SECTION 142.1306, SECTION 142.1305 TO SECTION 142.1307, SECTION 142.1306 TO SECTION 142.1308, ADDING NEW SECTION 142.1309, AMENDING AND RENUMBERING SECTION 142.1307 TO SECTION 142.1310, SECTION 142.1308 TO SECTION 142.1311, RENUMBERING SECTION 142.1309 TO SECTION 142.1312, AMENDING AND RENUMBERING SECTION 142.1310 TO SECTION 142.1313, AND SECTION 142.1311 TO SECTION 142.1314; AMENDING CHAPTER 14, ARTICLE 3, DIVISION 7 BY AMENDING SECTION 143.0720; AMENDING CHAPTER 14, ARTICLE 3, DIVISION 9 BY AMENDING SECTION 143.0915; AND AMENDING CHAPTER 14, ARTICLE 4, DIVISION 5 BY REPEALING SECTION 144.0508, RELATING TO INCLUSIONARY AFFORDABLE HOUSING REGULATIONS.

WHEREAS, the City adopted an inclusionary housing program in 2003 to assist with meeting the City's goals of providing affordable housing in a balanced manner; and

WHEREAS, the City's original Inclusionary Housing Ordinance (Ordinance) was adopted to address the City's need for an increased supply of affordable housing and to combat the adverse effects of sufficient affordable housing in new residential development; and

WHEREAS, the Ordinance gave developers the option to provide at least ten percent of the dwelling units in new residential development at affordable rates for low to median income households or to pay an in lieu fee; and

WHEREAS, in 2011, the City amended the Ordinance in response to several published court opinions limiting local government authority to enforce inclusionary housing programs; and

WHEREAS, under the Ordinance, developers of rental residential development are required to pay an inclusionary housing fee, and developers of for-sale residential development may choose to either pay the inclusionary housing fee or provide ten percent of the total dwelling units at prices affordable to median income households; and

WHEREAS, in September 2017, Assembly Bill 1505 (AB 1505), amending California Government Code sections 65850 and 65850.01, was adopted with the stated intent of “reaffirm[ing] the authority of local jurisdictions to include within these inclusionary housing ordinances requirements related to the provision of rental units”; and

WHEREAS, state law supports the City’s ability to require that a portion of rental residential development be made available for extremely low, very low, low, median and moderate income households; and

WHEREAS, the City continues to experience increases in the cost of housing and significant shortages in affordable housing; and

WHEREAS, according to the most recent Regional Housing Needs Allocation, required by California Government Code section 65584 and prepared by the San Diego Association of Governments, the City has a total housing need of 88,096 units through 2020, out of which nearly 62 percent is for low and moderate income households (54,142 units); and

WHEREAS, of the affordable units attributed to the City in the Regional Housing Needs Allocation: 10,988 units (13%) are for extremely low income households; 10,989 units (13%) are for very low income households; 16,703 units (19%) are for low income households; and 15,462

units (18%) are for moderate income households. These housing needs represent a significant increase from the previous Regional Housing Needs Allocation; and

WHEREAS, an inclusionary housing program represents an extension of the City's police powers to regulate land use, ensuring that the limited supply of developable land provides housing opportunities for households of all income levels; and

WHEREAS, the City continues to face a growing shortage of housing that is affordable to a wide range of its population and the lack of affordable housing is detrimental to the City's economic vitality and quality of life; and

WHEREAS, the lack of affordable housing is further detrimental to the health, safety, and welfare of the City's residents, who may be forced to live in less than adequate housing, pay a disproportionate share of their incomes to live in adequate housing, or commute significant distances to their jobs from housing located outside the City; and

WHEREAS, affordable housing furthers geographic and community balance by providing a range of housing opportunities throughout the City and supports the City's Balanced Communities Policies; and

WHEREAS, the City now desires to amend the Ordinance to help meet the City's goals of providing affordable housing in a balanced manner, to increase the supply of affordable housing in the City, and to combat the adverse effects of insufficient affordable housing; and

WHEREAS, the City desires to establish an in lieu fee based on the estimated gap in the cost required to provide inclusionary affordable units on a site different than the new market rate residential development through the development of affordable units financed with low income housing tax credits; and

WHEREAS, the San Diego Housing Commission hired Keyser Marston Associates, Inc., to prepare a series of real estate financial feasibility analyses related to the Ordinance, which the Council considered along with these amendments to the Ordinance; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 9, Article 8, Division 5 of the San Diego Municipal Code is amended by amending section 98.0502, to read as follows:

§98.0502 Establishment of the San Diego Affordable Housing Fund

- (a) There is established a fund to be known as the San Diego Affordable Housing Fund. The Affordable Housing Fund shall consist of funds received from the commercial development linkage fees paid to the City pursuant to Chapter 9, Article 8, Division 6 of the San Diego Municipal Code; revenues from the Transient Occupancy Tax as provided in Section 35.0128 of the San Diego Municipal Code; funds received from in lieu fees paid to the City and revenues received from promissory note repayments, shared equity payments, or other payments collected pursuant to Chapter 14, Article 2, Division 13 of the San Diego Municipal Code; and any other appropriations as determined from time to time by legislative action of the City Council. The Affordable Housing Fund shall be administered by the San Diego Housing Commission pursuant to the provisions of this Division, the appropriation ordinances and applicable Council policies.
- (b) There is also established within the Affordable Housing Fund, a San Diego Housing Trust Fund account. Except for funds received from in lieu fees paid to the City and revenues received from promissory note

repayments, shared equity payments, or other payments collected pursuant to Chapter 14, Article 2, Division 13 of the San Diego Municipal Code, all funds received by the Affordable Housing Fund, either from special funds or general fund appropriations, shall be deposited in the Housing Trust Fund account. The administration and use of monies from the San Diego Housing Trust Fund shall be subject to all provisions under this Division related to the Affordable Housing Fund.

- (c) There is also established within the Affordable Housing Fund, an Inclusionary Housing Fund account. Funds received from in lieu fees paid to the City and revenues received from promissory note repayments, shared equity payments, or other payments collected pursuant to Chapter 14, Article 2, Division 13 of the San Diego Municipal Code shall be deposited in the Inclusionary Housing Fund account. The administration and use of monies from the Inclusionary Housing Fund shall be subject to all provisions under this Division related to the Affordable Housing Fund.

Section 2. That Chapter 11, Article 3, Division 1 of the San Diego Municipal Code is amended by amending section 113.0103, to read as follows:

§113.0103 Definitions

Abutting property through *Marquee* [No change in text.]

Median income means any household whose income does not exceed the median income as adjusted for household size as defined by the U.S. Department of Housing and Urban Development for the San Diego Standard Metropolitan Statistical Area.

MHPA through *Multiple dwelling unit* [No change in text.]

Net building area means the aggregate *gross floor area* of all the unrestricted *dwelling units* within a *development*, excluding areas outside the *dwelling unit's* habitable space such as garages, carports, parking areas, porches, patios, open space, and excluding common areas such as lobbies, common hallways, stairways, elevators, and equipment spaces.

Off-street parking space through *Surface mining* [No change in text.]

Target population through *Yard* [No change in text.]

Section 3. That Chapter 14, Article 2, Division 6 of the San Diego Municipal Code is amended by amending section 142.0640, to read as follows:

§142.0640 Impact Fees for Financing Public Facilities

(a) [No change in text.]

(b) Payment of Fees

The payment of Development Impact Fees (as defined in California Government Code Section 66000) shall be required prior to issuance of any Building Permit in areas where Development Impact Fees have been established by City Council resolution or ordinance. Notwithstanding the above, the City Manager may also require the payment of Development Impact Fees prior to issuance of any *construction permit* issued or required for *development* that would increase demand for public facilities and/or result in the need for new public facilities. Development Impact Fees shall not be required for *permanent supportive housing*, transitional housing facilities, *companion unit* or *junior unit development*.

Development Impact Fees shall not be required for inclusionary *dwelling*

units provided pursuant to Chapter 14, Article 2, Division 13 if the *applicant* has satisfied all the requirements of Division 13 for inclusionary *dwelling units* on the same *premises* as the market-rate *dwelling units*. The Development Impact Fee due shall be determined in accordance with the fee schedule approved by the applicable City Council resolution in effect upon the issuance of a Building Permit, or *construction permit*, as applicable, and may include an automatic increase consistent with Section 142.0640(c).

(c) through (f) [No change in text.]

Section 4. That Chapter 14, Article 2, Division 13 of the San Diego Municipal Code is amended by amending sections 142.1302 and 142.1303, by adding new sections 142.1304 and 142.1305, by amending, renumbering, and retitling section 142.1304 to section 142.1306, section 142.1305 to section 142.1307, section 142.1306 to section 142.1308, adding new section 142.1309, amending and renumbering section 142.1307 to section 142.1310, section 142.1308 to section 142.1311, renumbering section 142.1309 to section 142.1312, amending and renumbering section 142.1310 to section 142.1313, and section 142.1311 to section 142.1314, to read as follows:

§142.1302 When Inclusionary Affordable Housing Regulations Apply

This Division applies to all residential *development* of 10 or more *dwelling units* and to all *condominium conversion development* of two or more *dwelling units*, except as provided in Section 142.1303. The requirements of this Division shall not be cumulative to state or other local affordable housing requirements where those *dwelling units* are subject to an affordability restriction recorded against the property by the state or local agency. To the extent that state or local regulations

are inconsistent with the requirements of this Division for the amount of the fee, length of the restriction or the level of affordability, the more restrictive shall apply.

§142.1303 Exemptions From the Inclusionary Affordable Housing Regulations

This Division is not applicable to the following:

- (a) [No change in text.]
- (b) Rehabilitation of an existing building that does not result in a net increase of *dwelling units* on the *premises*.
- (c) *Density* bonus units constructed in accordance with the provisions of Chapter 14, Article 3, Division 7.

§142.1304 Inclusionary Affordable Housing Requirements

From July 1, 2020 through June 30, 2024, the requirements of subsections (a) and (b) of this Section 142.1304 shall be implemented incrementally as set forth in the Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual on file with the San Diego Housing Commission (Procedures Manual). Effective July 1, 2024, all residential *development* subject to this Division shall include inclusionary *dwelling units* as follows:

- (a) Rental residential *development*:

At least 10 percent of the total *dwelling units* in the *development* shall be made available for rent by *very low income* households or *low income* households at a cost, including an allowance for utilities, that does not exceed 30 percent of 60 percent of *median income*.
- (b) For-sale residential *development*:

- (1) At least 10 percent of the total *dwelling units* in the *development* shall be made available for purchase at a cost affordable to *median income* households; or
 - (2) At least 15 percent of the total *dwelling units* in the *development* shall be made available for purchase at a cost affordable to *moderate income* households.
- (c) The *applicant* may propose a combination of inclusionary *dwelling units* required by this Division. The proposal shall be considered by the San Diego Housing Commission in accordance with this Division and the Procedures Manual. The proposal shall be approved if the combination provides substantially the same or greater level of affordability as required by this Division and provides the same or greater number of inclusionary *dwelling units* required by this Division.
- (d) For any partial inclusionary *dwelling unit* calculated, the *applicant* shall pay a prorated amount of the Inclusionary In Lieu Fee in accordance with Section 142.1306 or provide an additional inclusionary *dwelling unit*.
- (e) *Development* of inclusionary *dwelling units* shall be subject to the following:
 - (1) The inclusionary *dwelling units* shall be constructed at the same time as the market-rate *dwelling units* and receive final inspection approval from the Building Official no later than the date that the market-rate *dwelling units* receive final inspection approval from the Building Official. The *applicant* may seek an alternative

development schedule in accordance with Section 142.1310 and Section 142.1311.

- (2) The inclusionary *dwelling units* shall be comparable in *bedroom* mix, design, and overall quality of construction to the market-rate *dwelling units* in the *development*, as determined by the San Diego Housing Commission, except that the inclusionary *dwelling units* shall not be required to exceed three *bedrooms* per *dwelling unit*.
The square footage and interior features of the inclusionary *dwelling units* shall be good quality and consistent with current building standards for new housing in the City of San Diego.
- (3) Sale or lease of the inclusionary *dwelling units* shall follow the marketing requirements and procedures in the Procedures Manual.
- (4) *Development* of the inclusionary *dwelling units* shall follow all other requirements in the Procedures Manual.
- (f) Rental inclusionary *dwelling units* shall remain affordable for a period of not less than 55 years from the date of final inspection for the *development* or applicable phase of the *development*.
- (g) For-sale inclusionary *dwelling units* shall be owner-occupied and the San Diego Housing Commission shall cause the for-sale inclusionary *dwelling units* to be subject to documentation ensuring the following:
 - (1) The owner and the San Diego Housing Commission shall share equity in a for-sale inclusionary *dwelling unit*. For the purpose of this Section 142.1304, equity shall be defined in the Procedures Manual. Shared equity shall be measured by the difference

between the unrestricted fair market value of the inclusionary *dwelling unit* on the date of the first resale and the original unrestricted fair market value of the inclusionary *dwelling unit* at the time of its initial acquisition. Any equity calculation shall be based on an appraisal approved by the San Diego Housing Commission and shall consider the actual costs of any San Diego Housing Commission-approved improvements to the inclusionary *dwelling unit*. If the San Diego Housing Commission's calculation results in a negative number, the equity is deemed to be zero.

- (2) The owner and the San Diego Housing Commission shall share the equity earned during the owner's first 15 years of ownership at the time of the first resale, refinance, or transfer of the for-sale inclusionary *dwelling unit* in accordance with the table in the Procedures Manual. The San Diego Housing Commission may waive the requirement to share equity if the for-sale inclusionary *dwelling unit* is sold to another *median income* household or *moderate income* household in compliance with the Procedures Manual.
- (3) Upon any sale or transfer of the inclusionary *dwelling unit* by the original owner, whenever it occurs, the San Diego Housing Commission shall also receive that sum calculated as the difference between the original unrestricted fair market value of the inclusionary *dwelling unit* and the restricted value of the inclusionary *dwelling unit* at the time of the original sale, as

determined by an appraisal approved by the San Diego Housing Commission.

- (4) The owner shall sell the inclusionary *dwelling unit* at no less than fair market value unless sold to another *median income* household or *moderate income* household in compliance with the Procedures Manual.
- (5) Unless otherwise required by law, all promissory note repayments, shared equity payments, or other payments collected under this Section 142.1304(g) shall be deposited into the Affordable Housing Fund.
- (h) Residential *development* that intends to provide affordable *dwelling units* as a condition of the *development* and has an application for a *development permit*, for a *subdivision*, or for a Building Permit *deemed complete* before July 1, 2020 shall be subject to the version of these Inclusionary Affordable Housing Regulations in effect prior to July 1, 2020, as set forth in the Procedures Manual.

§142.1305 Methods of Compliance

- (a) The requirement to provide inclusionary *dwelling units* may be met in any of the following ways:
 - (1) On the same *premises* as the *development*;
 - (2) On different *premises* from the *development*, but within the same community planning area, or within one mile of the *premises* of the *development*, as measured in a straight line from the *property lines* of the *development premises* to the *property lines* of the proposed

- premises* where the inclusionary *dwelling units* will be constructed;
- (3) On different *premises* from the *development* that does not meet the locational criteria in Section 142.1305(a)(2) but within the City of San Diego, if the *applicant* provides five percent more inclusionary *dwelling units* than required for the *development* pursuant to Section 142.1304(a) or Section 142.1304(b);
 - (4) By payment of an Inclusionary In Lieu Fee in accordance with Section 142.1306 in lieu of constructing all or a portion of the inclusionary *dwelling units* required in Section 142.1304(a) or Section 142.1304(b);
 - (5) By rehabilitation of existing *dwelling units* or *SRO hotel rooms* or conversion of *guest rooms* in a *motel* or *hotel* to inclusionary *dwelling units* in accordance with Section 142.1307; or
 - (6) By land donation in accordance with Section 142.1308.
- (b) When a residential *development* includes both for-sale and rental *dwelling units*, the provisions of this Division that apply to for-sale *development* shall apply to that portion of the *development* that consists of for-sale *dwelling units*, and the provisions of this Division that apply to rental *dwelling units* shall apply to that portion of the *development* that consists of rental *dwelling units*.
 - (c) Nothing in this Division shall preclude an *applicant* from using affordable *dwelling units* constructed by another *applicant* to satisfy the requirements of this Division, including contracting with an affordable housing developer with experience obtaining tax-exempt bonds, low income

housing tax credits, and other competitive sources of financing, upon approval by the San Diego Housing Commission pursuant to the standards set forth in the Procedures Manual.

§142.1306 Inclusionary In Lieu Fee

- (a) From July 1, 2020 through June 30, 2024, the Inclusionary In Lieu Fee requirements shall be implemented incrementally as set forth in the Procedures Manual. Effective July 1, 2024, the Inclusionary In Lieu Fee shall be \$25.00 per square foot of *net building area* of unrestricted market-rate residential *development*. The Inclusionary In Lieu Fee shall be updated annually based on the annual increase in the Construction Costs Index (CCI) published by Engineering News Record for Los Angeles, or similar construction industry index selected by the City Manager if the CCI index is discontinued.
- (b) Except as provided in Section 142.1306(c), the Inclusionary In Lieu Fee shall be determined using the rate in effect at the time the *applicant's development permit* application, application for *subdivision* under the *Subdivision Map Act*, or Building Permit application is *deemed complete*, whichever is earlier. The Inclusionary In Lieu Fee shall be paid on or before the issuance of the first residential Building Permit for the *development*.
- (c) The Inclusionary In Lieu Fee applicable to residential *development* that has an application for a *development permit*, for a *subdivision*, or for a Building Permit *deemed complete* before July 1, 2020 shall be \$12.73 per

square foot multiplied by the *net building area* of the unrestricted market-rate residential *development*.

- (d) All funds collected pursuant to this Section 142.1306 shall be deposited into the Affordable Housing Fund.

§142.1307 Rehabilitation of Existing Dwelling Units, SRO Hotel Rooms, or Conversion of Guest Rooms

- (a) The requirements of this Division may be satisfied by the rehabilitation of existing *dwelling units* for conversion to inclusionary *dwelling units* affordable to *very low income* households or *low income* households at a cost, including an allowance for utilities, that does not exceed 30 percent of 60 percent of *median income*, if the City Manager determines all of the following:
 - (1) The San Diego Housing Commission is satisfied that the value of each *dwelling unit* after the rehabilitation work is 25 percent or more than the value of the *dwelling unit* prior to rehabilitation, inclusive of land value. The Procedures Manual shall include criteria for the determination of the value of the rehabilitation work;
 - (2) One *dwelling unit* shall be rehabilitated in lieu of each inclusionary *dwelling unit* required pursuant to Section 142.1304(a) or Section 142.1304(b);
 - (3) The rehabilitated *dwelling units* are located in an appropriate residential zone that can accommodate at least the number of rehabilitated *dwelling units* required by this Division, and if those

rehabilitated *dwelling units* are located within a *Transit Priority Area*, the number of *dwelling units* on the *premises* is at least 60 percent of the base *floor area ratio* or *density* designated by the zone in which the *premises* is located;

- (4) The *applicant* provides evidence that the existing *structure* has a remaining useful life of at least 55 years from the approval of the *dwelling unit* as an inclusionary *dwelling unit*;
- (5) The *applicant* provides evidence that the rehabilitation work complies with California Building Code requirements to the satisfaction of the Building Official;
- (6) The *applicant* provides a physical needs assessment to the satisfaction of the City Manager and the San Diego Housing Commission for each *dwelling unit* to be rehabilitated, for the *premises* where the *dwelling units* are located, and for any associated common area. All items identified in the physical needs assessment needing repair or replacement at the time of the assessment or that will likely require repair or replacement within three years of the assessment shall be completed by the *applicant* during the rehabilitation work; and
- (7) On or before the time the *applicant's* application is *deemed complete*, the *applicant* complies with the State Relocation Act codified in California Government Code Section 7260 and provides all costs of notice to, and relocation of, any existing residents occupying the *dwelling units* to be rehabilitated.

- (b) The requirements of this Division may be satisfied by the rehabilitation of existing *dwelling units* that are restricted for use and occupancy for *very low income* households or *low income* households earning up to 60 percent of the *median income* by agreement with a federal, state, or local government agency, if the City Manager determines all of the following:
- (1) The agreement restricting the use and occupancy of the *dwelling units* for *very low income* households or *low income* households expires within 10 years of completion of *applicant's* rehabilitation of the *dwelling units*;
 - (2) One restricted *dwelling unit* shall be rehabilitated in lieu of each inclusionary *dwelling unit* required pursuant to Section 142.1304(a) or Section 142.1304(b);
 - (3) The *applicant* provides evidence that the rehabilitation work complies with California Building Code requirements to the satisfaction of the Building Official;
 - (4) The *applicant* provides evidence that the existing *structure* has a remaining useful life of at least 55 years from the approval of the *dwelling unit* as an inclusionary *dwelling unit*; and
 - (5) The *applicant* provides a physical needs assessment to the satisfaction of the City Manager and the San Diego Housing Commission for each restricted *dwelling unit* to be rehabilitated, for the *premises* where the *dwelling units* are located, and for any associated common area. All items identified in the physical needs assessment needing repair or replacement at the time of the

assessment or that will likely require repair or replacement within three years of the assessment shall be completed by the *applicant* during the rehabilitation work.

(c) The requirements of this Division may be satisfied by the rehabilitation of existing *SRO hotel rooms* affordable to *very low income* households, if the City Manager determines all of the following:

- (1) The San Diego Housing Commission is satisfied that the value of each *SRO hotel room* after the rehabilitation work is 25 percent or more than the value of the *SRO hotel room* prior to rehabilitation, inclusive of land value. The Procedures Manual shall include criteria for the determination of the value of the rehabilitation work;
- (2) One *SRO hotel room* shall be rehabilitated and affordable to a *very low income* household in lieu of each inclusionary *dwelling unit* required pursuant to Section 142.1304(a) or Section 142.1304(b);
- (3) All of the *SRO hotel rooms* located in the *SRO hotel* shall be rehabilitated by the *applicant*;
- (4) The *SRO hotel* is located in an appropriate residential zone;
- (5) The *applicant* provides evidence that the existing *SRO hotel* has a remaining useful life of at least 55 years from completion of the rehabilitation work;
- (6) The *applicant* provides evidence that the rehabilitation work complies with California Building Code requirements to the satisfaction of the Building Official;

- (7) The *applicant* provides a physical needs assessment to the satisfaction of the City Manager and the San Diego Housing Commission for each *SRO hotel room* to be rehabilitated, for the *SRO hotel* where the *SRO hotel rooms* are located, and for any associated common area. All items identified in the physical needs assessment needing repair or replacement at the time of the assessment or that will likely require repair or replacement within three years of the assessment shall be completed by the *applicant* during the rehabilitation work; and
 - (8) The *applicant* complies with the State Relocation Act codified in California Government Code Section 7260 and provides all costs of notice to, and relocation of, any existing residents occupying the *SRO hotel rooms* to be rehabilitated at the time the application is *deemed complete*.
- (d) The requirements of this Division may be satisfied by the conversion of existing *guest rooms* in a *motel* or *hotel* to inclusionary *dwelling units* affordable to *very low income* households or *low income* households at a cost, including an allowance for utilities, that does not exceed 30 percent of 60 percent of *median income*, if the City Manager determines all of the following:
- (1) One *guest room* shall be converted to an inclusionary *dwelling unit* in lieu of each inclusionary *dwelling unit* required pursuant to Section 142.1304(a) or Section 142.1304(b);

- (2) The *motel* or *hotel* is located in an appropriate residential zone that can accommodate at least the number of converted *guest rooms* required by this Division, and if the *motel* or *hotel* is located within a *Transit Priority Area*, the number of *guest rooms* in the *motel* or *hotel* is at least 60 percent of the base *floor area ratio* or *density* designated by the zone in which the *motel* or *hotel* is located;
 - (3) The *applicant* provides evidence that the existing *structure* has a remaining useful life of at least 55 years from conversion of the *guest rooms*;
 - (4) The *applicant* provides evidence that the construction or rehabilitation work complies with California Building Code requirements to the satisfaction of the Building Official; and
 - (5) The *applicant* provides a physical needs assessment to the satisfaction of the City Manager and the San Diego Housing Commission for each *guest room* to be converted, for the *motel* or *hotel* where the *guest rooms* are located, and for any associated common area. All items identified in the physical needs assessment needing repair or replacement at the time of the assessment or that will likely require repair or replacement within three years of the assessment shall be completed by the *applicant* during conversion of the *guest rooms*.
- (e) Any inclusionary *dwelling units* or rehabilitated *SRO hotel rooms* provided pursuant to this Section 142.1307 shall be completed no later than the date the *applicant's* market-rate *dwelling units* receive final

inspection approval from the Building Official. The *applicant* may seek an alternative *development* schedule in accordance with Section 142.1310 and Section 142.1311.

- (f) Inclusionary *dwelling units* and rehabilitated *SRO hotel rooms* provided pursuant to this Section 142.1307 shall remain affordable for a period of not less than 55 years from the date of final inspection or the date accepted by the San Diego Housing Commission.
- (g) The affordability of inclusionary *dwelling units* and rehabilitated *SRO hotel rooms* provided pursuant to this Section 142.1307 shall be secured by a Declaration of Covenants, Conditions and Restrictions in favor of the San Diego Housing Commission, recorded against the market-rate residential *development* and the *premises* where the inclusionary *dwelling units* or rehabilitated *SRO hotel rooms* are located. The Declaration of Covenants, Conditions and Restrictions shall comply with the provisions of Section 142.1313 and shall include the method by which a capital reserve fund for repair, replacement, and maintenance of the inclusionary *dwelling units* or rehabilitated *SRO hotel rooms* shall be maintained with provision for sufficient initial capitalization and periodic contributions to the capital reserve fund.

§142.1308 Land Donation

The requirements of this Division may be satisfied by the donation of land, if the donation is completed in accordance with California Government Section 65915(g) and Chapter 14, Division 7, Article 3 of the San Diego Municipal Code and if the value of the land on the date of donation is equal to or

greater than the Inclusionary In Lieu Fee applicable to the *applicant's* *development* on the date of donation.

§142.1309 Incentives for On-Site Inclusionary Dwelling Units

- (a) An *applicant* may submit a written request for *density* bonus, waiver, or incentives pursuant to California Government Code Section 65915 and Chapter 14, Division 7, Article 3 of the San Diego Municipal Code if the *development* meets the minimum thresholds for *density* bonus pursuant to California Government Code Sections 65915 – 65918.
- (b) If an *applicant* has complied with this Division by providing all the inclusionary *dwelling units* required by this Division on the same *premises* as the market-rate *dwelling units*, then the inclusionary *dwelling units* shall be exempt from the payment of Development Impact Fees pursuant to Section 142.0640 of the San Diego Municipal Code.

§142.1310 Variance, Waiver, Adjustment or Reduction of Inclusionary Affordable Housing Regulations

- (a) A variance, adjustment, or reduction from the provisions of this Division may be requested and decided in accordance with Process Four. A waiver from the provisions of this Division may be requested and decided in accordance with Process Five. Any variance, waiver, adjustment or reduction shall require either that the *findings* in Section 142.1311(a) or in Section 142.1311(b) be made.
- (b) [No change in text.]

§142.1311 Findings for Variance, Waiver, Adjustment or Reduction Approval

- (a) [No change in text.]
- (b) The decision maker may approve or conditionally approve an application for a variance, waiver, adjustment, or reduction to the provisions of this Division if the decision maker makes *findings* that applying the requirements of this Division would take property in violation of the United States or California Constitutions.

§142.1312 General Rules for Inclusionary Affordable Housing Regulations

- (a) through (b) [No change in text.]

§142.1313 Declaration of Covenants, Conditions and Restrictions

All *development* of inclusionary *dwelling units* pursuant to this Division shall be subject to the following:

- (a) Each inclusionary *dwelling unit* and the applicable portions of the *premises* shall have recorded against them a Declaration of Covenants, Conditions and Restrictions approved by and in favor of the San Diego Housing Commission.
- (b) Any Declaration of Covenants, Conditions and Restrictions required by this Division shall enjoy first lien position and shall be secured by a deed of trust in favor of the San Diego Housing Commission recorded against the applicable portions of the *premises* and *dwelling unit*, prior to construction or permanent financing.

§142.1314 Reporting Requirements

The San Diego Housing Commission shall annually report to the City Council and the Housing Authority of the City of San Diego on the results of implementing this Division, including the following:

- (a) The number of *applicants* and location of *developments* that came before the City for ministerial or discretionary approval and the number of *applicants* and location of *developments* that were subject to the requirements of this Division;
- (b) The number of *applicants* and location of *developments* that applied for a waiver, variance, reduction, or adjustment in accordance with this Division, and the number of *applicants* and location of *developments* that were granted a waiver, variance, reduction, or adjustment and the terms of each; and
- (c) The number of market-rate units developed subject to this Division, the number of inclusionary *dwelling units* along with their location, the methods of compliance with this Division, and the total Inclusionary In Lieu Fees paid.

Section 5. That Chapter 14, Article 3, Division 7 of the San Diego Municipal Code is amended by amending section 143.0720, to read as follows:

§143.0720 Density Bonus in Exchange for Affordable Housing Units

- (a) [No change in text.]
- (b) The *density* bonus *dwelling units* authorized by this Division shall be exempt from the Inclusionary Housing Regulations set forth in Chapter 14, Article 2, Division 13.

(c) through (i) [No change in text.]

Section 6. That Chapter 14, Article 3, Division 9 of the San Diego Municipal Code is amended by amending section 143.0915, to read as follows:

§143.0915 When Supplemental Neighborhood Development Permit Regulations Apply for Affordable Housing, In-Fill Projects, and Sustainable Buildings

These regulations apply to the following types of *development*:

(a) Affordable housing, which is any of the following:

- (1) Residential *development* (including both for-sale and for-rent inclusionary *dwelling units*) in accordance with Chapter 14, Article 2, Division 13.

(2) through (6) [No change in text.]

(b) through (c) [No change in text.]

Section 7. That Chapter 14, Article 4, Division 5 of the San Diego Municipal Code is amended by repealing section 144.0508.

Section 8. That a full reading of this Ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 9. That this Ordinance shall take effect on July 1, 2020, except that the Ordinance shall be implemented incrementally from July 1, 2020 through July 1, 2024, as provided in Section 13, and except that the provisions of this Ordinance applicable inside the Coastal Overlay Zone, which are subject to California Coastal Commission jurisdiction as a City of San Diego Local Coastal Program amendment, shall not take effect until the date the California Coastal Commission unconditionally certifies those provisions as a local coastal program amendment.

Section 10. That the San Diego County Regional Airport Authority (SDCRAA) has determined that this Ordinance does not require a consistency determination.


Section 11. That no permits shall be issued for development that is inconsistent with the provisions of this Ordinance unless the applicant's application for a development permit, for a subdivision, or for a Building Permit, whichever is earlier, is deemed complete prior to the date on which the applicable provisions of this Ordinance, as incrementally implemented, become effective.

Section 12. That Ordinances O-21118, O-21114, O-21115, O-21116, and O-21117 have been recently considered by the City Council and that Ordinances O-2020-3, O-2020-9, O-2020-60, O-2020-65, O-2020-66, and O-2020-68 will be considered by the City Council in the near future which amend San Diego Municipal Code sections also amended by this Ordinance; therefore, the City Clerk, with the written approval and concurrence of the City Attorney, is authorized to reconcile the numbering of sections and placement of text within these sections upon the final passage of the Ordinances, without further action by the City Council, pursuant to San Diego Charter section 275.

Section 13. That this Ordinance shall take effect and be in force on July 1, 2020 and shall be implemented incrementally so that it is fully effective by July 1, 2024. From July 1, 2020 through June 30, 2021, developers will be required to provide 20 percent of the total percentages of required inclusionary dwelling units in Section 142.1304 or pay the Inclusionary In Lieu Fee of \$15.18 per square foot. From July 1, 2021 through June 30, 2022, developers will be required to provide 40 percent of the total percentages of required inclusionary dwelling units in Section 142.1304 or pay the Inclusionary In Lieu Fee of \$17.64 per square foot. From July 1, 2022 through June 30, 2023, developers will be required to provide 60 percent of the total percentages of required inclusionary dwelling units in Section 142.1304 or pay the Inclusionary

In Lieu Fee of \$20.09 per square foot. From July 1, 2023 through June 30, 2024, developers will be required to provide 80 percent of the total percentages of required inclusionary dwelling units in Section 142.1304 or pay the Inclusionary In Lieu Fee of \$22.55. Beginning on July 1, 2024, developers shall comply with all of the requirements of this Ordinance. Any requirement in the Ordinance to provide additional inclusionary dwelling units as a condition of electing an alternative method of compliance shall apply, without reduction, from the effective date of this Ordinance. The Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual shall provide additional detail about implementation of this Ordinance.

APPROVED: MARA W. ELLIOTT, City Attorney

By 
Heather M. Ferbert
Deputy City Attorney

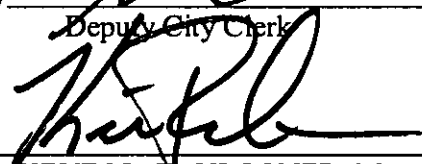
HMF:soc
11/25/2019
Or. Dept: Council District 9
Doc. No.: 2212622

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of JAN 14 2020.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 1/28/2020
(date)


KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~

NEW LANGUAGE: Double Underline

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 9, ARTICLE 8, DIVISION 5 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 98.0502; AMENDING CHAPTER 11, ARTICLE 3, DIVISION 1 BY AMENDING SECTION 113.0103; AMENDING CHAPTER 14, ARTICLE 2, DIVISION 6 BY AMENDING SECTION 142.0640; AMENDING CHAPTER 14, ARTICLE 2, DIVISION 13 BY AMENDING SECTIONS 142.1302 AND 142.1303, BY ADDING NEW SECTIONS 142.1304 AND 142.1305, BY AMENDING, RENUMBERING, AND RETITLING SECTION 142.1304 TO SECTION 142.1306, SECTION 142.1305 TO SECTION 142.1307, SECTION 142.1306 TO SECTION 142.1308, ADDING NEW SECTION 142.1309, AMENDING AND RENUMBERING SECTION 142.1307 TO SECTION 142.1310, SECTION 142.1308 TO SECTION 142.1311, RENUMBERING SECTION 142.1309 TO SECTION 142.1312, AMENDING AND RENUMBERING SECTION 142.1310 TO SECTION 142.1313, AND SECTION 142.1311 TO SECTION 142.1314; AMENDING CHAPTER 14, ARTICLE 3, DIVISION 7 BY AMENDING SECTION 143.0720; AMENDING CHAPTER 14, ARTICLE 3, DIVISION 9 BY AMENDING SECTION 143.0915; AND AMENDING CHAPTER 14, ARTICLE 4, DIVISION 5 BY REPEALING SECTION 144.0508, RELATING TO INCLUSIONARY AFFORDABLE HOUSING REGULATIONS.

§98.0502 Establishment of the San Diego Affordable Housing Fund

- (a) There is ~~hereby~~ established a fund to be known ~~and denominated~~ as the San Diego Affordable Housing Fund. The Affordable Housing Fund shall consist of funds ~~derived~~ received from the commercial development linkage fees paid to the City pursuant to Chapter 9, ~~Division 6~~, Article 8, Division 6 of the San Diego Municipal Code; revenues from the Transient

Occupancy Tax as provided in Section 35.0128 of the San Diego Municipal Code; funds ~~derived~~ received from in lieu fees paid to the City pursuant to ~~Chapter 14, Article 2, Division 13; and~~ revenues received from ~~the use of a shared equity program pursuant to Section 142.1309(e)~~ promissory note repayments, shared equity payments, or other payments collected pursuant to Chapter 14, Article 2, Division 13 of the San Diego Municipal Code; and any other appropriations as determined from time to time by legislative action of the City Council. The Affordable Housing Fund shall be administered by the San Diego Housing Commission pursuant to the provisions of this Division, the appropriation ordinances and applicable Council policies ~~applicable thereto~~.

- (b) There is also ~~hereby~~ established within the Affordable Housing Fund, a San Diego Housing Trust Fund account. Except for funds received from in lieu fees paid to the City pursuant to ~~Chapter 14, Article 2, Division 13~~ and revenues received from ~~the use of a shared equity program pursuant to Section 142.1309(e)~~ promissory note repayments, shared equity payments, or other payments collected pursuant to Chapter 14, Article 2, Division 13 of the San Diego Municipal Code, all funds received by the Affordable Housing Trust Fund, either from special funds or general fund appropriations, shall be deposited in the Housing Trust Fund account. The administration and use of monies from the San Diego Housing Trust Fund shall be subject to all provisions under this Division related to the Affordable Housing Fund.

- (c) There is also hereby established within the Affordable Housing Fund, an Inclusionary Housing Fund account. Funds received from in lieu fees paid to the City pursuant to Chapter 14, Article 2, Division 13 and revenues received from the use of a shared equity program pursuant to Section 142.1309(e) promissory note repayments, shared equity payments, or other payments collected pursuant to Chapter 14, Article 2, Division 13 of the San Diego Municipal Code shall be deposited in the Inclusionary Housing Fund account. The administration and use of monies from the Inclusionary Housing Fund shall be subject to all provisions under this Division related to the Affordable Housing Fund.

§113.0103 Definitions

Abutting property through Marquee [No change in text.]

Median income means any household whose income does not exceed the median income as adjusted for household size as defined by the U.S. Department of Housing and Urban Development for the San Diego Standard Metropolitan Statistical Area.

MHPA through Multiple dwelling unit [No change in text.]

Net building area means the aggregate gross floor area of all the unrestricted dwelling units within a development, excluding areas outside the dwelling unit's habitable space such as garages, carports, parking areas, porches, patios, open space, and excluding common areas such as lobbies, common hallways, stairways, elevators, and equipment spaces.

Off-street parking space through *Surface mining* [No change in text.] ~~*Targeted rental household*~~ means any household whose combined annual gross income for all members does not exceed sixty five percent (65%) of the Area Median Income as adjusted for household size as determined by the U.S. Department of Housing and Urban Development (HUD) for the San Diego Standard Metropolitan Statistical Area.

~~*Targeted ownership household*~~ means any household whose combined annual gross income for all members does not exceed one hundred percent (100%) of the Area Median Income as adjusted for household size as determined by the U.S. Department of Housing and Urban Development (HUD) for the San Diego Standard Metropolitan Statistical Area.

Target population through *Yard* [No change in text.]

§142.0640 Impact Fees for Financing Public Facilities

(a) [No change in text.]

(b) Payment of Fees

The payment of Development Impact Fees (as defined in California Government Code Section 66000) shall be required prior to issuance of any Building Permit in areas where Development Impact Fees have been established by City Council resolution or ordinance. Notwithstanding the above, the City Manager may also require the payment of Development Impact Fees prior to issuance of any *construction permit* issued or required for *development* that would increase demand for public facilities and/or result in the need for new public facilities. Development Impact

Fees shall not be required for *permanent supportive housing*, transitional housing facilities, *companion unit* or *junior unit development*.

Development Impact Fees shall not be required for inclusionary dwelling units provided pursuant to Chapter 14, Article 2, Division 13 if the applicant has satisfied all the requirements of Division 13 for inclusionary dwelling units on the same premises as the market-rate dwelling units. The Development Impact Fee due shall be determined in accordance with the fee schedule approved by the applicable City Council resolution in effect upon the issuance of a Building Permit, or *construction permit*, as applicable, and may include an automatic increase consistent with Section 142.0640(c).

(c) through (f) [No change in text.]

§142.1302 When Inclusionary Affordable Housing Regulations Apply

This Division applies to all residential *development* of ~~two~~ 10 or more *units dwelling units* and to all condominium conversion development of two or more dwelling units, except as provided in Section 142.1303. The requirements of this Division shall not be cumulative to state or other local affordable housing requirements where those ~~units~~ *dwelling units* are subject to an affordability restriction recorded against the property by the state or local agency. To the extent that state or local regulations are inconsistent with the requirements of this Division for the amount of the fee, length of the restriction or the level of affordability, the more restrictive shall apply.

§142.1303 Exemptions From the Inclusionary Affordable ~~Inclusionary~~ Housing Regulations

This Division is not applicable to the following:

- (a) [No change in text.]
- (b) ~~Residential development or portion of the development~~ that meets the following criteria:
 - (1) ~~The unit is being sold to persons who own no other real property and will reside in the unit;~~
 - (2) ~~The unit is affordable to and sold to households earning less than one hundred fifty percent (150%) of the area median income;~~
 - (3) ~~The unit has two (2) or more bedrooms; and~~
 - (4) ~~The unit(s) has recorded against it an agreement between the applicant and the San Diego Housing Commission assuring that the provisions of Section 142.1303(e) have been met.~~
- (e)(b) Rehabilitation of an existing building that does not result in a net increase of *dwelling units* on the *premises*.
- (d)(c) *Density* bonus units constructed in accordance with the provisions of Chapter 14, Article 3, Division 7.
- (e) ~~Certain condominium conversion developments as set forth in Section 142.1306(e).~~
- (f) ~~Residential development containing at least ten percent of the total dwelling units in the proposed development as affordable to and occupied by targeted rental households for a period of not less than 55 years. To ensure compliance with the Costa Hawkins Rental Housing Act, this~~

~~Section applies only to a proposed *development* where the *applicant* agrees in a contract with a public entity to restrict rents at the proposed *development* in consideration for a direct financial contribution or a form of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code.~~

- (g) ~~Residential *development* containing at least ten percent of the dwelling units as affordable to and occupied by *targeted rental households* for a period of not less than 55 years, as a result of the *applicant's* voluntary pursuit and receipt of tax credits, multifamily housing bonds, below market interest rate loans, and/or grants to facilitate the construction of the *development*.~~

§142.1304 Inclusionary Affordable Housing Requirements

From July 1, 2020 through June 30, 2024, the requirements of subsections (a) and (b) of this Section 142.1304 shall be implemented incrementally as set forth in the Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual on file with the San Diego Housing Commission (Procedures Manual). Effective July 1, 2024, all residential *development* subject to this Division shall include inclusionary *dwelling units* as follows:

- (a) Rental residential *development*:

At least 10 percent of the total *dwelling units* in the *development* shall be made available for rent by *very low income* households or *low income* households at a cost, including an allowance for utilities, that does not exceed 30 percent of 60 percent of *median income*.

- (b) For-sale residential *development*:
- (1) At least 10 percent of the total *dwelling units* in the *development* shall be made available for purchase at a cost affordable to *median income* households; or
 - (2) At least 15 percent of the total *dwelling units* in the *development* shall be made available for purchase at a cost affordable to *moderate income* households.
- (c) The *applicant* may propose a combination of inclusionary *dwelling units* required by this Division. The proposal shall be considered by the San Diego Housing Commission in accordance with this Division and the Procedures Manual. The proposal shall be approved if the combination provides substantially the same or greater level of affordability as required by this Division and provides the same or greater number of inclusionary *dwelling units* required by this Division.
- (d) For any partial inclusionary *dwelling unit* calculated, the *applicant* shall pay a prorated amount of the Inclusionary In Lieu Fee in accordance with Section 142.1306 or provide an additional inclusionary *dwelling unit*.
- (e) *Development* of inclusionary *dwelling units* shall be subject to the following:
- (1) The inclusionary *dwelling units* shall be constructed at the same time as the market-rate *dwelling units* and receive final inspection approval from the Building Official no later than the date that the market-rate *dwelling units* receive final inspection approval from

the Building Official. The applicant may seek an alternative development schedule in accordance with Section 142.1310 and Section 142.1311.

- (2) The inclusionary dwelling units shall be comparable in bedroom mix, design, and overall quality of construction to the market-rate dwelling units in the development as determined by the San Diego Housing Commission, except that the inclusionary dwelling units shall not be required to exceed three bedrooms per dwelling unit. The square footage and interior features of the inclusionary dwelling units shall be good quality and consistent with current building standards for new housing in the City of San Diego.
- (3) Sale or lease of the inclusionary dwelling units shall follow the marketing requirements and procedures in the Procedures Manual.
- (4) Development of the inclusionary dwelling units shall follow all other requirements in the Procedures Manual.
- (f) Rental inclusionary dwelling units shall remain affordable for a period of not less than 55 years from the date of final inspection for the development or applicable phase of the development.
- (g) For-sale inclusionary dwelling units shall be owner-occupied and the San Diego Housing Commission shall cause the for-sale inclusionary dwelling units to be subject to documentation ensuring the following:

 - (1) The owner and the San Diego Housing Commission shall share equity in a for-sale inclusionary dwelling unit. For the purpose of

this Section 142.1304, equity shall be defined in the Procedures Manual. Shared equity shall be measured by the difference between the unrestricted fair market value of the inclusionary dwelling unit on the date of the first resale and the original unrestricted fair market value of the inclusionary dwelling unit at the time of its initial acquisition. Any equity calculation shall be based on an appraisal approved by the San Diego Housing Commission and shall consider the actual costs of any San Diego Housing Commission-approved improvements to the inclusionary dwelling unit. If the San Diego Housing Commission's calculation results in a negative number, the equity is deemed to be zero.

(2) The owner and the San Diego Housing Commission shall share the equity earned during the owner's first 15 years of ownership at the time of the first resale, refinance, or transfer of the for-sale inclusionary dwelling unit in accordance with the table in the Procedures Manual. The San Diego Housing Commission may waive the requirement to share equity if the for-sale inclusionary dwelling unit is sold to another median income household or moderate income household in compliance with the Procedures Manual.

(3) Upon any sale or transfer of the inclusionary dwelling unit by the original owner, whenever it occurs, the San Diego Housing Commission shall also receive that sum calculated as the

difference between the original unrestricted fair market value of the inclusionary dwelling unit and the restricted value of the inclusionary dwelling unit at the time of the original sale, as determined by an appraisal approved by the San Diego Housing Commission.

(4) The owner shall sell the inclusionary dwelling unit at no less than fair market value unless sold to another median income household or moderate income household in compliance with the Procedures Manual.

(5) Unless otherwise required by law, all promissory note repayments, shared equity payments, or other payments collected under this Section 142.1304(g) shall be deposited into the Affordable Housing Fund.

(h) Residential development that intends to provide affordable dwelling units as a condition of the development and has an application for a development permit, for a subdivision, or for a Building Permit deemed complete before July 1, 2020 shall be subject to the version of these Inclusionary Affordable Housing Regulations in effect prior to July 1, 2020, as set forth in the Procedures Manual.

§142.1305 **Methods of Compliance**

(a) The requirement to provide inclusionary dwelling units may be met in any of the following ways:

(1) On the same premises as the development;

- (2) On different premises from the development, but within the same community planning area, or within one mile of the premises of the development, as measured in a straight line from the property lines of the development premises to the property lines of the proposed premises where the inclusionary dwelling units will be constructed;
- (3) On different premises from the development that does not meet the locational criteria in Section 142.1305(a)(2) but within the City of San Diego, if the applicant provides five percent more inclusionary dwelling units than required for the development pursuant to Section 142.1304(a) or Section 142.1304(b);
- (4) By payment of an Inclusionary In Lieu Fee in accordance with Section 142.1306 in lieu of constructing all or a portion of the inclusionary dwelling units required in Section 142.1304(a) or Section 142.1304(b);
- (5) By rehabilitation of existing dwelling units or SRO hotel rooms or conversion of guest rooms in a motel or hotel to inclusionary dwelling units in accordance with Section 142.1307; or
- (6) By land donation in accordance with Section 142.1308.
- (b) When a residential development includes both for-sale and rental dwelling units, the provisions of this Division that apply to for-sale development shall apply to that portion of the development that consists of for-sale dwelling units, and the provisions of this Division that apply to rental dwelling units shall apply to that portion of the development that consists

of rental dwelling units.

- (c) Nothing in this Division shall preclude an applicant from using affordable dwelling units constructed by another applicant to satisfy the requirements of this Division, including contracting with an affordable housing developer with experience obtaining tax-exempt bonds, low income housing tax credits, and other competitive sources of financing, upon approval by the San Diego Housing Commission pursuant to the standards set forth in the Procedures Manual.

§142.130406 Inclusionary Affordable Housing In Lieu Fee

~~All development subject to this Division, except for condominium conversion developments which shall comply with Section 142.1306, shall pay an~~

~~Inclusionary Affordable Housing Fee to the City as follows:~~

- (a) The From July 1, 2020 through June 30, 2024, the Inclusionary In Lieu Fee requirements shall be implemented incrementally as set forth in the Procedures Manual. Effective July 1, 2024, the Inclusionary Affordable Housing In Lieu Fee shall be the product of the applicable per-square foot charge multiplied by the aggregate gross floor area of all of the units within the development \$25.00 per square foot of net building area of unrestricted market-rate residential development. The Inclusionary In Lieu Fee shall be updated annually based on the annual increase in the Construction Costs Index (CCI) published by Engineering News Record for Los Angeles, or similar construction industry index selected by the City Manager if the CCI index is discontinued.

- (b) ~~The applicable per square foot charge shall be calculated annually by the San Diego Housing Commission according to the formula set forth in the Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual as approved by the City Council.~~
- (e)(b) ~~The~~ Except as provided in Section 142.1306(c), the Inclusionary Affordable Housing In Lieu Fee shall be determined using the rate in effect at the time the building permit the applicant's development permit application, application for subdivision under the Subdivision Map Act, or Building Permit application is filed deemed complete, whichever is earlier. The Inclusionary Affordable Housing In Lieu Fee shall be paid on or before the issuance of the first residential ~~b~~Building ~~p~~Permit for the *development.*
- (c) The Inclusionary In Lieu Fee applicable to residential development that has an application for a development permit, for a subdivision, or for a Building Permit deemed complete before July 1, 2020 shall be \$12.73 per square foot multiplied by the net building area of the unrestricted market-rate residential development.
- (d)(e) ~~Any applicant may pre-pay the Inclusionary Affordable Housing In Lieu Fee any time after the building permit application is deemed complete, which shall be determined using the rate in effect on the date of pre-payment, consistent with Section 142.1306(b).~~
- (d) All funds collected pursuant to this ~~Division~~ Section 142.1306 shall be deposited into the Affordable Housing Fund.

§142.130507 ~~Election to Provide For-Sale Affordable Housing Units in a For-Sale Development~~ Rehabilitation of Existing Dwelling Units, SRO Hotel Rooms, or Conversion of Guest Rooms

- (a) ~~Instead of paying the applicable Inclusionary Affordable Housing Fee, an applicant may elect to comply with this Division by providing at least ten percent of the total dwelling units in the proposed development as affordable to targeted ownership households in a for-sale development.~~ The requirements of this Division may be satisfied by the rehabilitation of existing dwelling units for conversion to inclusionary dwelling units affordable to very low income households or low income households at a cost, including an allowance for utilities, that does not exceed 30 percent of 60 percent of median income, if the City Manager determines all of the following:
- (1) The San Diego Housing Commission is satisfied that the value of each dwelling unit after the rehabilitation work is 25 percent or more than the value of the dwelling unit prior to rehabilitation, inclusive of land value. The Procedures Manual shall include criteria for the determination of the value of the rehabilitation work;
 - (2) One dwelling unit shall be rehabilitated in lieu of each inclusionary dwelling unit required pursuant to Section 142.1304(a) or Section 142.1304(b);
 - (3) The rehabilitated dwelling units are located in an appropriate residential zone that can accommodate at least the number of

rehabilitated dwelling units required by this Division, and if those rehabilitated dwelling units are located within a Transit Priority Area, the number of dwelling units on the premises is at least 60 percent of the base floor area ratio or density designated by the zone in which the premises is located;

- (4) The applicant provides evidence that the existing structure has a remaining useful life of at least 55 years from the approval of the dwelling unit as an inclusionary dwelling unit;
- (5) The applicant provides evidence that the rehabilitation work complies with California Building Code requirements to the satisfaction of the Building Official;
- (6) The applicant provides a physical needs assessment to the satisfaction of the City Manager and the San Diego Housing Commission for each dwelling unit to be rehabilitated, for the premises where the dwelling units are located, and for any associated common area. All items identified in the physical needs assessment needing repair or replacement at the time of the assessment or that will likely require repair or replacement within three years of the assessment shall be completed by the applicant during the rehabilitation work; and
- (7) On or before the time the applicant's application is deemed complete, the applicant complies with the State Relocation Act codified in California Government Code Section 7260 and

provides all costs of notice to, and relocation of, any existing residents occupying the dwelling units to be rehabilitated.

- (b) ~~The development of for-sale affordable housing units is subject to the following requirements and the provisions of the Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual. The~~ requirements of this Division may be satisfied by the rehabilitation of existing dwelling units that are restricted for use and occupancy for very low income households or low income households earning up to 60 percent of the median income by agreement with a federal, state, or local government agency, if the City Manager determines all of the following:

- (1) ~~The for-sale affordable housing units shall be constructed and receive final inspection approval from the Building Official no later than the date that the market-rate units receive final inspection approval from the Building Official. The applicant may seek an alternative development schedule in accordance with the provisions of Sections 142.1307 and 142.1308. The agreement restricting the use and occupancy of the dwelling units for very low income households or low income households expires within 10 years of completion of the applicant's rehabilitation of the dwelling units;~~
- (2) ~~The sales price for each for-sale affordable housing unit shall not exceed an amount that is affordable to a targeted ownership household, as determined by the San Diego Housing Commission and detailed in the Inclusionary Housing Procedures Manual. One~~

restricted dwelling unit shall be rehabilitated in lieu of each inclusionary dwelling unit required pursuant to Section 142.1304(a) or Section 142.1304(b):

- (3) ~~The equity in a for-sale affordable housing unit shall be shared between the owner and the San Diego Housing Commission in an amount based upon length of ownership at the time of the first resale, in accordance with Table 142-13A. The applicant provides evidence that the rehabilitation work complies with California Building Code requirements to the satisfaction of the Building Official;~~

- (A) ~~Equity means the difference between the unrestricted fair market value of the affordable unit on the date of the first resale, as determined by an appraisal approved by the San Diego Housing Commission, and the sum of: (i) the original unrestricted fair market value of the affordable housing unit at the time of its acquisition by the *targeted ownership household*, and (ii) the actual costs of any San Diego Housing Commission approved improvements to the affordable unit. If the foregoing calculation of equity results in a negative number, the equity shall be deemed to be zero.~~

- (B) ~~The term resale is defined in the Inclusionary Affordable Housing Implementation and Monitoring Procedures~~

~~Manual, and includes the sale, conveyance, transfer or refinancing of all or any part of the affordable unit by a targeted ownership household.~~

- (C) Equity shall not be shared if all of the following apply:
- (i) The purchaser of the affordable unit is a *targeted ownership household* approved by the San Diego Housing Commission;
 - (ii) The sales price does not exceed an amount that is affordable to a *targeted ownership household* as determined by the San Diego Housing Commission; and
 - (iii) The purchaser assumes all of the obligations of the *initial targeted ownership household*.
- (4) ~~All funds collected shall be deposited into the Affordable Housing Fund. The applicant provides evidence that the existing structure has a remaining useful life of at least 55 years from the approval of the dwelling unit as an inclusionary dwelling unit; and~~
- (5) ~~The San Diego Housing Commission shall be entitled to the first right of refusal on any for-sale affordable unit upon its sale. The applicant provides a physical needs assessment to the satisfaction of the City Manager and the San Diego Housing Commission for each restricted dwelling unit to be rehabilitated, for the premises where the dwelling units are located, and for any associated~~

common area. All items identified in the physical needs assessment needing repair or replacement at the time of the assessment or that will likely require repair or replacement within three years of the assessment shall be completed by the *applicant* during the rehabilitation work.

- (6) ~~Each for-sale affordable housing unit shall have recorded against it a Declaration of Covenants, Conditions and Restrictions that complies with Section 142.1310. The Declaration of Covenants, Conditions and Restrictions shall be secured by a recorded deed of trust in favor of the San Diego Housing Commission.~~
- (c) The requirements of this Division may be satisfied by the rehabilitation of existing *SRO hotel rooms* affordable to *very low income* households, if the City Manager determines all of the following:
- (1) The San Diego Housing Commission is satisfied that the value of each *SRO hotel room* after the rehabilitation work is 25 percent or more than the value of the *SRO hotel room* prior to rehabilitation, inclusive of land value. The Procedures Manual shall include criteria for the determination of the value of the rehabilitation work;
- (2) One *SRO hotel room* shall be rehabilitated and affordable to a *very low income* household in lieu of each inclusionary *dwelling unit* required pursuant to Section 142.1304(a) or Section 142.1304(b);

- (3) All of the *SRO hotel rooms* located in the *SRO hotel* shall be rehabilitated by the *applicant*;
- (4) The *SRO hotel* is located in an appropriate residential zone;
- (5) The *applicant* provides evidence that the existing *SRO hotel* has a remaining useful life of at least 55 years from completion of the rehabilitation work;
- (6) The *applicant* provides evidence that the rehabilitation work complies with California Building Code requirements to the satisfaction of the Building Official;
- (7) The *applicant* provides a physical needs assessment to the satisfaction of the City Manager and the San Diego Housing Commission for each *SRO hotel room* to be rehabilitated, for the *SRO hotel* where the *SRO hotel rooms* are located, and for any associated common area. All items identified in the physical needs assessment needing repair or replacement at the time of the assessment or that will likely require repair or replacement within three years of the assessment shall be completed by the *applicant* during the rehabilitation work; and
- (8) The *applicant* complies with the State Relocation Act codified in California Government Code Section 7260 and provides all costs of notice to, and relocation of, any existing residents occupying the *SRO hotel rooms* to be rehabilitated at the time the application is deemed complete.

- (d) The requirements of this Division may be satisfied by the conversion of existing guest rooms in a motel or hotel to inclusionary dwelling units affordable to very low income households or low income households at a cost, including an allowance for utilities, that does not exceed 30 percent of 60 percent of median income, if the City Manager determines all of the following:
- (1) One guest room shall be converted to an inclusionary dwelling unit in lieu of each inclusionary dwelling unit required pursuant to Section 142.1304(a) or Section 142.1304(b);
 - (2) The motel or hotel is located in an appropriate residential zone that can accommodate at least the number of converted guest rooms required by this Division, and if the motel or hotel is located within a Transit Priority Area, the number of guest rooms in the motel or hotel is at least 60 percent of the base floor area ratio or density designated by the zone in which the motel or hotel is located;
 - (3) The applicant provides evidence that the existing structure has a remaining useful life of at least 55 years from conversion of the guest rooms;
 - (4) The applicant provides evidence that the construction or rehabilitation work complies with California Building Code requirements to the satisfaction of the Building Official; and
 - (5) The applicant provides a physical needs assessment to the satisfaction of the City Manager and the San Diego Housing

Commission for each guest room to be converted, for the motel or hotel where the guest rooms are located, and for any associated common area. All items identified in the physical needs assessment needing repair or replacement at the time of the assessment or that will likely require repair or replacement within three years of the assessment shall be completed by the applicant during conversion of the guest rooms.

- (e) Any inclusionary dwelling units or rehabilitated SRO hotel rooms provided pursuant to this Section 142.1307 shall be completed no later than the date the applicant's market-rate dwelling units receive final inspection approval from the Building Official. The applicant may seek an alternative development schedule in accordance with Section 142.1310 and Section 142.1311.
- (f) Inclusionary dwelling units and rehabilitated SRO hotel rooms provided pursuant to this Section 142.1307 shall remain affordable for a period of not less than 55 years from the date of final inspection or the date accepted by the San Diego Housing Commission.
- (g) The affordability of inclusionary dwelling units and rehabilitated SRO hotel rooms provided pursuant to this Section 142.1307 shall be secured by a Declaration of Covenants, Conditions and Restrictions in favor of the San Diego Housing Commission, recorded against the market-rate residential development and the premises where the inclusionary dwelling units or rehabilitated SRO hotel rooms are located. The Declaration of

Covenants, Conditions and Restrictions shall comply with the provisions of Section 142.1313 and shall include the method by which a capital reserve fund for repair, replacement, and maintenance of the inclusionary dwelling units or rehabilitated SRO hotel rooms shall be maintained with provision for sufficient initial capitalization and periodic contributions to the capital reserve fund.

TABLE 142-13A

Length of Ownership at the Time of Resale, Refinance, or Transfer	Share of Equity to Household
Months 0-12	15%
Year 2	21
Year 3	27
Year 4	33
Year 5	39
Year 6	45
Year 7	51
Year 8	57
Year 9	63
Year 10	69
Year 11	75
Year 12	81
Year 13	87
Year 14	93
Year 15 or after	100%

§142.130608 Inclusionary Affordable Housing Obligations for Condominium Conversions Land Donation

- (a) ~~All condominium conversion developments~~ subject to this Division shall pay a Condominium Conversion Inclusionary Affordable Housing Fee to the City. The requirements of this Division may be satisfied by the

donation of land, if the donation is completed in accordance with California Government Section 65915(g) and Chapter 14, Division 7, Article 3 of the San Diego Municipal Code and if the value of the land on the date of donation is equal to or greater than the Inclusionary In Lieu Fee applicable to the *applicant's development* on the date of donation.

- (1) ~~The Condominium Conversion Inclusionary Affordable Housing Fee shall be one-half of the Inclusionary Affordable Housing Fee, calculated pursuant to Section 142.1304 and the Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual.~~
- (2) ~~The Condominium Conversion Inclusionary Affordable Housing Fee shall be paid at the close of escrow of the first condominium sold within the *development*. The Condominium Conversion Inclusionary Affordable Housing Fee shall be calculated using the rate in effect at the close of escrow of the first condominium sold within the *development*. The *applicant* and the San Diego Housing Commission shall enter into a written agreement securing payment of the Condominium Conversion Inclusionary Affordable Housing Fee, which shall be recorded against the *development* and secured by a recorded deed of trust in favor of the San Diego Housing Commission. The San Diego Housing Commission shall collect all Condominium Conversion Inclusionary Affordable Housing Fees~~

~~at the close of escrow of the first condominium sold within the~~
~~development.~~

- (3) ~~Any applicant may pre-pay the Condominium Conversion Inclusionary Affordable Housing Fee, which shall be calculated using the rate in effect on the date of pre-payment. All pre-paid fees shall be collected by the City.~~
 - (4) ~~All funds collected shall be deposited into the Affordable Housing Fund.~~
- (b) ~~Instead of paying the applicable Condominium Conversion Inclusionary Affordable Housing Fee, an applicant for a condominium conversion development subject to this Division may elect to comply with this Division by providing at least five percent of the total dwelling units in the development as affordable to and occupied by targeted ownership households subject to Section 142.1305 and the Inclusionary Affordable Housing Implementation Procedures Manual.~~
- (c) ~~This Division is not applicable to condominium conversion developments that meet all of the following:~~
- (1) ~~All of the dwelling units in the condominium conversion development are initially affordable to and sold to households earning at or below eighty percent of the area median income; and~~
 - (2) ~~The applicant executes a declaration under penalty of perjury that the dwelling units satisfy the condition set forth in Section 142.1306(c)(1) above.~~

~~In the event that the San Diego Housing Commission determines the dwelling units do not satisfying the conditions set forth in Sections 142.1306(e)(1) and (e)(2) above, then, upon such discovery, the San Diego Housing Commission shall require the applicant to pay the applicable Condominium Conversion Inclusionary Affordable Housing Fee in effect at the close of escrow of the first condominium sold within the development.~~

§142.1309 **Incentives for On-Site Inclusionary Dwelling Units**

- (a) An applicant may submit a written request for density bonus, waiver, or incentives pursuant to California Government Code Section 65915 and Chapter 14, Division 7, Article 3 of the San Diego Municipal Code if the development meets the minimum thresholds for density bonus pursuant to California Government Code Sections 65915 – 65918.
- (b) If an applicant has complied with this Division by providing all the inclusionary dwelling units required by this Division on the same premises as the market-rate dwelling units, then the inclusionary dwelling units shall be exempt from the payment of Development Impact Fees pursuant to Section 142.0640 of the San Diego Municipal Code.

§142.130710 **Variance, Waiver, Adjustment or Reduction of Inclusionary Affordable Housing Regulations**

- (a) A variance, adjustment, or reduction from the provisions of this Division may be requested and decided in accordance with Process Four. A waiver from the provisions of this Division may be requested and decided in accordance with Process Five. Any variance, waiver, adjustment or

reduction shall require either that the ~~findings~~findings in Section 142.130811(a) or in Section 142.130811(b) be made.

- (b) [No change in text.]
- (c) ~~A development located within an adopted redevelopment project area and subject to a Redevelopment Agency agreement may seek a variance, waiver, adjustment, or reduction from the requirements of this Division, upon an express finding that the development is fulfilling a stated significant objective(s) of the Redevelopment Agency's approved Five Year Redevelopment Plan for the Redevelopment Project Area. The variance, adjustment, or reduction request shall be reviewed in accordance with Process Four. Waiver requests shall be reviewed in accordance with Process Five.~~

§142.130811 Findings for Variance, Waiver, Adjustment or Reduction Approval

- (a) [No change in text.]
- (b) The decision maker may approve or conditionally approve an application for a variance, waiver, adjustment, or reduction to the provisions of this Division if the decision maker makes a finding findings that ~~there is an absence of any reasonable relationship or nexus between the impact of the development and the amount of the Inclusionary Affordable Housing Fee, the Condominium Conversion Inclusionary Affordable Housing Fee, or the inclusionary requirement~~ applying the requirements of this Division would take property in violation of the United States or California Constitutions.

- (e) ~~For a development that proposes to provide affordable housing on a site different from the proposed project site and outside the community planning area, the decision maker may approve or conditionally approve a variance to the Inclusionary Affordable Housing Regulations only if the decision maker makes the following supplemental findings:~~
- (1) ~~The portion of the proposed development outside of the community planning area will assist in meeting the goal of providing economically balanced communities; and~~
 - (2) ~~The portion of the proposed development outside of the community planning area will assist in meeting the goal of providing transit-oriented development.~~

§142.130912 General Rules for Inclusionary Affordable Housing Regulations

(a) through (b) [No change in text.]

§142.134013 Declaration of Covenants, Conditions and Restrictions

All ~~development of affordable units~~ inclusionary dwelling units pursuant to ~~142.1305 or Section 142.1306(b)~~ this Division shall be subject to the following requirements, in addition to those in the ~~Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual;~~

- (a) Each inclusionary dwelling unit and ~~t~~The applicable portions of the ~~development premises~~ shall have recorded against ~~it~~ them a Declaration of Covenants, Conditions and Restrictions approved by and in favor of the San Diego Housing Commission.

- (b) Any Declaration of Covenants, Conditions and Restrictions required by this Division shall enjoy first lien position and shall be secured by a deed of trust in favor of the San Diego Housing Commission recorded against the ~~development~~ applicable portions of the premises or unit and dwelling unit, as applicable, prior to construction or permanent financing.

§142.13414 Reporting Requirements

- (a) The San Diego Housing Commission shall annually report to the City Council and the Housing Authority of the City of San Diego on the results of implementing this Division, including, ~~but not limited to~~, the following:
- (1)(a) The number of *applicants* and location of *developments* that came before the City for ministerial or discretionary approval and the number of *applicants* and location of *developments* that were subject to the requirements of this Division;
- (2)(b) The number of *applicants* and location of *developments* that applied for a waiver, variance, reduction, or adjustment in accordance with this Division, and the number of *applicants* and location of *developments* that were granted a waiver, variance, reduction, or adjustment and the terms of each; and
- (3)(c) The number of market-rate units developed subject to this Division, and the number of ~~affordable units~~, inclusionary dwelling units along with their including the location of all affordable units, the methods of compliance with this Division, and the total Inclusionary Affordable

~~Housing In Lieu Fees and Condominium Conversion Inclusionary~~

~~Affordable Housing Fees paid.~~

§143.0720 Density Bonus in Exchange for Affordable Housing Units

- (a) [No change in text.]
- (b) The *density bonus dwelling units* authorized by this Division shall be exempt from the Inclusionary Housing Regulations set forth in Chapter 14, Article 2, Division 13. ~~Development providing at least 10 percent of the total pre-density bonus dwelling units as affordable to rental households at or below 65% area median income for not less than 55 years is exempt from the payment of Inclusionary Affordable Housing Fees. Notwithstanding Section 142.1303(f), development providing less than 10 percent of the pre-density bonus dwelling units as affordable to rental households at or below 65% area median income for not less than 55 years shall pay pro-rated Inclusionary Affordable Housing Fees as determined by the Housing Commission, so that the inclusionary requirement may be satisfied by a combination of providing affordable rental dwelling units and paying a pro-rated Inclusionary Affordable Housing Fee.~~
- (c) through (i) [No change in text.]

§143.0915 When Supplemental Neighborhood Development Permit Regulations Apply for Affordable Housing, In-Fill Projects, and Sustainable Buildings

These regulations apply to the following types of *development*:

- (a) Affordable housing, which is any of the following:
 - (1) Residential *development* (including both for-sale and for-rent ~~affordable housing~~ *inclusionary dwelling units*) in accordance with

~~Section 142.1305~~ Chapter 14, Article 2, Division 13.

(2) through (6) [No change in text.]

(b) through (c) [No change in text.]

~~§144.0508~~ Inclusionary Housing Requirement for Condominium Conversions

~~Condominium conversion~~ projects of twenty or more units shall satisfy the
inclusionary housing requirements on site in accordance with ~~Section 142.1306.~~

HMF:soc
11/25/2019
Or. Dept: Council District 9
Doc. No.: 2212619

Passed by the Council of The City of San Diego on JAN 14 2020, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gómez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JAN 28 2020

AUTHENTICATED BY:

(Seal)

KEVIN L. FAULCONER

Mayor of The City of San Diego, California.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California.

By [Signature], Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

DEC 10 2019

and on

JAN 28 2020

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California.

By [Signature], Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O- **21167**